

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION;)
AMERICAN CIVIL LIBERTIES UNION)
FOUNDATION; NEW YORK CIVIL LIBERTIES)
UNION; AND NEW YORK CIVIL LIBERTIES)
UNION FOUNDATION,)
Plaintiffs,)
v.) No. 13-cv-03994 (WHP)
JAMES R. CLAPPER, in his official capacity as)
Director of National Intelligence; KEITH B.)
ALEXANDER, in his official capacity as Director)
Of the National Security Agency and Chief of the)
Central Security Service; CHARLES T. HAGEL, in)
his official capacity as Secretary of Defense; ERIC)
H. HOLDER, in his official capacity as Attorney)
General of the United States; and ROBERT S.)
MUELLER III, in his official capacity as Director)
Of the Federal Bureau of Investigation,)
Defendants.)

MOTION OF NONPARTIES FORMER MEMBERS OF THE CHURCH
COMMITTEE AND LAW PROFESSORS TO FILE AN *AMICUS CURIAE*
BRIEF IN SUPPORT OF PLAINTIFF

DATED: August 30, 2013

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Nonparties Former Members of the Church Committee and Law Professors hereby move for leave to file the accompanying *amicus curiae* brief in the above-captioned case in support of Plaintiffs. Both Plaintiffs and Defendants have consented to the filing of this brief.

The *Amicus Curiae* is constituted by two groups with common interest and expertise. The first is comprised of former members of the 1975-76 Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (“Church Committee”), whose hearings led to the introduction and adoption of the 1978 Foreign Intelligence Surveillance Act. This legislation is the over-arching statute at issue in this case. The second group consists of law professors who specialize in Legal History, Constitutional Law, National Security Law, Internet Law, and Privacy Law. In their brief, *Amici* argue that the National Security Agency’s telephony metadata program contradicts the very reason Congress introduced the statute in the first place—namely, to limit the conditions under which U.S. persons’ information can be collected, analyzed, and distributed. *Amici* note that the program also violates the specific statutory language under which the program falls. Finally, *Amici* suggest that delegating targeting decisions to the Executive Branch abdicates the responsibilities assigned by Congress to the Foreign Intelligence Surveillance Court.

The fundamental standard for submission of an *amicus* brief is whether it “will aid in the determination of the motions at issue.” *James Square Nursing Home, Inc. v. Wing*, 897 F. Supp. 682, 683 (N.D.N.Y. 1995) *aff’d*, 84 F.3d 591 (2d

Cir. 1996). *Amici* play a variety of roles. As Justice Alito has noted, “Some friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case.” *Neonatology Associates, P.A. v. C.I.R.*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.)

Amici will assist the Court in both respects. Former members of the Church Committee have decades of insight into the operation of intelligence gathering in the United States and a particular expertise with regard to the programs that gave rise to the introduction of the Foreign Intelligence Surveillance Act. The law professors, in turn, have carefully researched and studied the introduction and evolution of intelligence-gathering authorities, new technologies, and/or Fourth Amendment law in the United States. They teach and write on various aspects of the issues raised in this case. Their perspective, together with those of the former Church Committee members, will provide a view of the governing statute beyond the parties in the case.

For these reasons, *Amici* respectfully request that the Court grant this motion for leave to file the accompanying *amicus curiae* brief.

Dated: August 30, 2013

Respectfully submitted,

By:


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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Southern District of New York by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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